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WELLS FARGO BANK, N.A.

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 ROSA AGUILAR (sic), an individual,

16 Plaintiff,

17 v.

18 WELLS FARGO BANK, N.A. and
19 DOES 1 THROUGH 100, inclusive,

20 Defendants.
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Case No. 5:15-cv-1833

(Superior Court Case No. CIV
DS1511231)

**DEFENDANT'S NOTICE OF
REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1332,
1441 AND 1446 (DIVERSITY
JURISDICTION)**

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**
2 **DISTRICT OF CALIFORNIA, PLAINTIFF, AND HER COUNSEL OF**
3 **RECORD:**

4 **PLEASE TAKE NOTICE** that, Defendant Wells Fargo Bank, N.A. (“Wells
5 Fargo”), hereby removes the above-entitled action from the Superior Court of the
6 State of California in and for the County of San Bernardino, to the United States
7 District Court for the Central District of California.¹ This Court has original subject
8 matter jurisdiction over Plaintiff’s lawsuit under 28 U.S.C. § 1332(a) because
9 complete diversity exists and the amount in controversy exceeds \$75,000.
10 Accordingly, removal is proper based on the following grounds:

11 **BACKGROUND**

12 1. On or about August 6, 2015, Plaintiff Rosa Aguilera (“Plaintiff”), who
13 is erroneously named in the caption of the Complaint as “Rosa Aguilar,” filed a
14 Complaint against Wells Fargo in the Superior Court of the State of California,
15 County of San Bernardino, Case No. CIV DS1511231 (the “Complaint”). A true
16 and correct copy of the Complaint is attached hereto as **Exhibit “A.”**

17 2. The Complaint purports to assert claims for relief arising out of
18 Plaintiff’s employment with Wells Fargo. Specifically, Plaintiff brings claims for
19 (1) wrongful discharge in violation of public policy; (2) race and national origin
20 discrimination; and (3) “unlawful retaliation – whistleblowing” against Wells Fargo.

21 **TIMELINESS OF REMOVAL**

22 3. Plaintiff served Wells Fargo with a copy of the Complaint on August
23 13, 2015. A true and correct copy of the Summons is attached as **Exhibit “B.”**

24 _____
25 ¹ There is no requirement at the removal stage to attach evidence to support
26 the allegations in the removal. Rather, removal is governed by Rule 8 requiring only a
27 “short and plain statement of the grounds for removal.” Dart Cherokee Basin Operating
28 Co., LLC v. Owens, 135 S. Ct. 547, 553 (2014).

1 4. On September 4, 2015, Wells Fargo filed its general denial Answer in
2 state court. A true and correct copy of the Answer Wells Fargo filed is attached as
3 **Exhibit “C.”**

4 5. This Notice of Removal is timely as it is filed within thirty (30) days of
5 the first receipt by a defendant of a copy of a paper (in this case, the Complaint) that
6 revealed this case was properly removable. 28 U.S.C. § 1446(b).

7 **DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)**

8 6. **Plaintiff’s Citizenship:** Plaintiff is, and at all times since the
9 commencement of this action has been, a citizen and resident of the State of
10 California.² To establish citizenship for diversity purposes, a natural person must be
11 both (a) a citizen of the United States and (b) a domiciliary of one particular state.
12 *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). Residence
13 is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d
14 514, 520 (10th Cir. 1994). Wells Fargo is informed and believes, and on that basis
15 alleges, that Plaintiff was domiciled in California while she worked for Wells Fargo
16 in California. Plaintiff therefore is, or was at the institution of this civil action, a
17 citizen of California.

18 7. **Wells Fargo’s Citizenship:** The proper defendant here, Wells Fargo
19 Bank, N.A., is not a citizen of California. Pursuant to 28 U.S.C. § 1348, Wells
20 Fargo Bank, N.A., as a national banking association, is a citizen of the state where
21 its main office is “located.” Wells Fargo, with its main office located in Sioux Falls,
22 South Dakota, is a citizen of South Dakota. *See Rouse v. Wachovia Mortgage, FSB*,
23 747 F.3d 707, 711 (9th Cir. 2014) (holding that “Wells Fargo is a citizen only of
24 South Dakota, where its main office is located”). Accordingly, Wells Fargo Bank,
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26

27 ² Complaint ¶ 1 (“Plaintiff now, and at all relevant times has resided in the
28 County of San Bernardino, State of California.”).

1 N.A. is only a citizen of South Dakota and not California for diversity purposes.
2 Thus, complete diversity exists here.

3 8. **Doe Defendants:** Pursuant to 28 U.S.C. Section 1441(a), the residence
4 of fictitious and unknown defendants should be disregarded for purposes of
5 establishing removal jurisdiction under 28 U.S.C. Section 1332. *Fristos v. Reynolds*
6 *Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not
7 required to join in a removal petition). Thus, the existence of Doe defendants 1
8 through 100, inclusive, does not deprive this Court of jurisdiction.

9 **AMOUNT IN CONTROVERSY EXCEEDS \$75,000**

10 9. This action is a civil action between citizens of different states and the
11 amount in controversy exceeds \$75,000, exclusive of interest and costs, and
12 accordingly, this Court has original jurisdiction under 28 U.S.C. §§ 1332(a).

13 10. **Alleged Lost Wages:** Plaintiff pleads that Wells Fargo wrongfully
14 terminated Plaintiff's employment on May 20, 2015.³ Plaintiff alleges that as a
15 result of the purported wrongful termination, she has lost earnings.⁴ At the time of
16 her termination from Wells Fargo, Plaintiff earned \$13.00 per hour, which translates
17 into approximately \$27,040 per year. Plaintiff did not plead that she has regained
18 alternative employment. Therefore, assuming it takes more than one year by the
19 time this matter is resolved by trial, Plaintiff's claimed lost earnings will most likely
20 be in excess of \$35,000.

21 11. **Emotional Distress Damages:** In addition, Plaintiff alleges that, as a
22 result of Wells Fargo's alleged wrongful termination of her employment, she has
23 suffered "severe emotional and physical distress."⁵ The emotional distress
24 component of Plaintiff's alleged damages must be considered in determining
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26 ³ Complaint ¶ 10.

27 ⁴ Complaint ¶ 14.

28 ⁵ Complaint ¶ 14.

1 whether the amount in controversy requirement has been established. *See, Kroske v.*
2 *U.S. Bank Corp.*, 432 F. 3d 976, 980 (9th Cir. 2005). Further, a defendant may use
3 damage awards in other cases to establish that the amount in controversy exceeds
4 \$75,000. *See, Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1033 (N.D. Cal. 2002).
5 Juries in California have awarded well in excess of \$75,000 for emotional distress
6 damages in a wrongful termination case like this one. *See, e.g., Roby v. McKesson*,
7 47 Cal. 4th 686, 699 (2009) (awarding a single plaintiff \$1,600,000 in non-economic
8 damages for three separate counts of wrongful termination (later reduced by
9 stipulation to \$800,000), as well as an additional \$600,000 in non-economic
10 damages for harassment). Thus, if Plaintiff is able to prove her claims at trial, it is
11 reasonable to conclude that Plaintiff will seek, and a jury may award, in excess of
12 \$75,000 for emotional distress damages. Accordingly, the amount in controversy
13 here clearly exceeds \$75,000.

14 **12. Punitive Damages:** The Complaint also alleges that Plaintiff is
15 entitled to recover punitive damages for Wells Fargo's allegedly despicable
16 misconduct.⁶ Punitive damages should be considered when determining the amount
17 in controversy. *See, Simmons*, 209 F. Supp. 2d at 1033 (recognizing that jury
18 verdicts in other similar cases in California "amply demonstrate the potential for
19 large punitive damage awards in employment discrimination cases.").

20 **13. Attorneys' Fees:** The Complaint also alleges that Plaintiff is entitled
21 to recover attorneys' fees.⁷ Attorneys' fees are available as a matter of right to a
22 prevailing Plaintiff suing under the Fair Employment and Housing Act. Govt. Code
23 §12965. Requests for attorneys' fees should be taken into account in ascertaining
24 the amount in controversy. *See, Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156
25 (9th Cir. 1998) (claims for attorneys' fees are to be included in the amount in

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27 ⁶ Complaint ¶¶ 16, Prayer ¶ 2.

28 ⁷ Complaint, Prayer ¶ 3.

1 controversy, regardless of whether the award is discretionary or mandatory). If
2 Plaintiff litigated this case through trial and prevailed, it is reasonable to assume that
3 Plaintiff could recover more than \$75,000 in attorneys' fees.

4 14. Based on the foregoing, there is ample evidence that the amount in
5 controversy, based on the totality of Plaintiff's claims and prayer for relief,
6 significantly exceeds \$75,000.

7 **VENUE**

8 15. Venue lies in the Central District of California pursuant to 28 U.S.C.
9 Sections 1441, 1446(a), and 84(c)(2). This action originally was brought in the
10 Superior Court of the State of California, County of San Bernardino, and the Wells
11 Fargo office where Plaintiff worked is located in the County of San Bernardino,
12 California.

13 **NOTICE OF REMOVAL**

14 16. This Notice of Removal will be promptly served on Plaintiff and filed
15 with the Clerk of the Superior Court of the State of California in and for the County
16 of San Bernardino.

17 17. In compliance with 28 U.S.C. § 1446(a), true and correct copies of all
18 "process, pleadings, and orders" from the state court action served on Wells Fargo
19 or filed by Wells Fargo are attached hereto as the following exhibits, including the
20 Complaint (Exhibit A), the Wells Fargo Summons and other documents served on
21 Wells Fargo with the Complaint (Exhibit B), and Wells Fargo's Answer (Exhibit C).

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1 **WHEREFORE**, Wells Fargo requests that the above action pending before
2 the Superior Court of the State of California for the County of San Bernardino be
3 removed to the United States District Court for the Central District of California.

4 Dated: September 8, 2015

5 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
6

7 By

 /s/ Thomas R. Kaufman

8 THOMAS R. KAUFMAN
9 RUBEN D. ESCALANTE
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12 WELLS FARGO BANK, N.A.
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